

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 2668 of 2005()

STC.6264/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

PETITIONER: ACCUSED NO.2

P.V.PRASAD, SREE PRASADAM FOODS,
DOOR NO.VIII 62, ELAMBACHI, P.O.ELAMBACHI,
KASARAGOD DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: COMPLAINANT

1. FOOD INSPECTOR, THALASSERY MUNICIPALITY

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.LAKSHMI RANI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 20/03/2007, THE COURT ON 20/03/2007 PASSED THE
FOLLOWING:

A.K. BASHEER, J.

Crl.M.C. NO. 2668 OF 2005

Dated this the 20th day of March, 2007

J U D G M E N T

Petitioner is being prosecuted under Section 16(1) a(i) read with Section 7(ii) and Section 2(ix)K of the Prevention of Food Adulteration Act 1954 [for short "the Act"] and Rule 40(2) of the Prevention of Food Adulteration Rules [for short "the Rules"]. Petitioner has been arraigned as Accused No.2 in the above proceedings.

2. The Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings pending against him on the file of the Judicial Magistrate of First Class, Thalasserry in STC 6264/04. The 1st respondent filed Annexure I complaint before the court below alleging that the sample of vinegar purchased from Accused No.1 was certified as mis branded under Section 2(ix)K of the Act. The case of the Food Inspector appears to be that he had purchased the food article in question from Accused No.1 on July 22, 2002 after issuing Form VI notice. Three bottles containing 500 ml.

each of non fruit vinegar were purchased by the Food Inspector and they were sealed and labelled as provided under the Act and the Rules. One sample was sent for analysis pursuant to which Annexure II report was issued by the Public Analyst. Food Inspector contended that in view of the report issued by the Analyst, petitioner and Accused No.1 were liable to be prosecuted under the Act and the Rules thereunder.

3. It is the contention of the petitioner that he had obtained Annexure III licence for manufacture of Jam Group, Squash Group, Pickles, Non fruit vinegar etc. from the Ministry of Food Processing Industries under Government of India. The licence was issued to him under the Fruit Products Order, 1955. It is pointed out by the learned counsel that in the year 1997 the Central Government had amended Clause 11(2) of the Fruit Products Order by which the word "synthetic" was substituted by "non fruit" in the said clause. The label on the bottle of vinegar purchased by the Food Inspector contained the words "non fruit" as indicated in Clause 11(2) of the food products order and therefore petitioner cannot be held to have violated any statutory provision. Learned counsel has invited my attention to a decision

of this Court in **Achamma v. Union of India** [2004 (3) KLT 81] in which an identical question was considered. This Court had held that "in the light of the amendment of the Fruit Products Order as a result of which the word "synthetic" is substituted by the word 'non-fruit", marking of vinegar products by labelling them as "non-fruit" instead of "synthetic" will not amount to misbranding."

In view of the above decision, I am satisfied that the prosecution launched against the petitioner is liable to be quashed. I do so. The Crl.M.C. is therefore allowed.

A.K. BASHEER, JUDGE

vps

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KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006